



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1994

Ms. Wendy Blackwell
Acting Executive Director
Economic Development Corporation
of Copperas Cove
408 South Main Street, Suite 201
Copperas Cove, Texas 76522

OR94-220

Dear Ms. Blackwell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. Your request was assigned ID# 24365.

The Economic Development Corporation of Copperas Cove ("EDC") has received two requests for audio tape recordings of a joint workshop between the Copperas Cove City Council and the EDC held on January 18, 1994, and for tape recordings or minutes of meetings of the EDC's Financial Review Committee from its inception until its termination. The requestor also seeks "complete disclosure of stockholders, amount of stock and date purchased of Copperas Cove Investment Group, Jim Schmitz, administrator, in No Touch Inc." You have submitted the tape recordings and minutes to us,¹ contending that sections 552.101, 552.104, and 552.110 of the Government Code except the information from required public disclosure.

¹You have provided us with tape recorded or typed minutes of a number of meetings, but you have not provided records disclosing the "stockholders, amount of stock and date purchased of Copperas Cove Investment Group, Jim Schmitz, administrator, in No Touch Inc." If the present requestors have asked for the identical documents submitted to us in connection with Open Records Letter No. 93-729 (1993) ("OR93-729") and addressed in that ruling, you may rely on our determination in OR93-729 as to those items. If the requestors have asked for documents about No Touch, Inc., that are not addressed in OR93-729, you are required to submit the documents, or representative samples, to us. If you do not, the documents are presumed open, and this presumption may be overcome only by a compelling interest.

Since a city council is subject to the Open Meetings Act, the January 18, 1994 joint "workshop" between the Copperas Cove City Council and the EDC may have been subject to the Open Meetings Act. See Gov't Code §§ 551.001-551.002. If that "workshop" was subject to the Open Meetings Act, the minutes or tape recording of the open sessions are open to the public pursuant to section 551.022 of the Government Code.

Pursuant to section 552.305 of the Government Code, we have solicited arguments from the parties whose proprietary interests are here implicated. We have received responses from Trinity Worship Center, Cove Tool & Die Manufacturing, Inc., NoTouch, Inc., and Mat's Organic Gardens. In addition, EDC has submitted responses on behalf of Cove Tool & Die Manufacturing, Inc., Awesome Card, and Wyatt's Photography Studio. Trinity Worship Center and Cove Tool & Die Manufacturing, Inc., do not object to the release of the information. The other respondents object to release of the requested information, on grounds that it contains proprietary information.

We first address your claim that section 552.104 excepts the requested information from required public disclosure. Section 552.104 excepts from required public disclosure "information which, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. Open Records Decision No. 541 (1990). Section 552.104, however, may not be claimed to protect a governmental body's "competitive advantage" because it cannot be regarded as being in competition with private enterprise. Open Records Decision No. 463 (1987); *but see* Open Records Decision No. 593 (1991) (holding that a governmental body might be deemed, under certain circumstances, to be a "competitor" in the marketplace). You do not claim, nor are we otherwise aware, that the requested information relates to a pending competitive bidding process. Accordingly, we conclude that EDC may not withhold the requested information under section 552.104 of the Government Code.

You also claim that section 552.110 excepts the requested information from required public disclosure. Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. You and the respondents claim that the information submitted to us for review constitutes "trade secrets" and "commercial or financial" information. We address first the "trade secrets" branch of section 552.110.

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.),

cert. denied, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, . . . [but] a process or device for continuous use in the operation of the business* [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]

RESTATEMENT OF TORTS § 757 cmt. b (1939). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5.²

We have examined the information submitted to us for review. Having examined the arguments submitted to us for review, we conclude that neither you nor the respondents have made a *prima facie* case that the requested information constitutes trade

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 (1982) at 2; 306 (1982) at 2; 255 (1980) at 2.

secrets. Accordingly, we conclude that EDC may not withhold the requested information under the trade secrets branch of section 552.110.

Finally, we address the "commercial or financial" information aspect of section 552.110. In Open Records Decision No. 592 (1991), this office held that, unless information constitutes trade secrets or is "commercial or financial information . . . [that is] privileged or confidential" under the common or statutory law of Texas, it cannot be withheld under section 552.110. You have not stated, nor is it otherwise apparent, that the requested information is privileged or confidential under the common law or statutory law of Texas.

You have also raised section 552.101 of the Government Code. The "commercial and financial" information aspect of section 552.110 is effectively coextensive with section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Open Records Decision No. 592.

Our review of the minutes shows that some of the applicants for financial assistance are individuals planning to operate a sole proprietorship, and that there is discussion of personal financial information about these individuals. This office has held that personal financial information about an individual may be private information, but that information relevant to the individual's financial transaction with a governmental body is not protected by a right of privacy. *See* Open Records Decision Nos. 545 (1990); 523 (1989) (distinguishing between "background" financial information about an individual, and information about the individual's financial dealings with the governmental body). We have examined the typewritten minutes as representative samples of all minutes, and have determined that the personal financial information recorded therein is relevant to the project for which the applicants seek funding and the applicant's qualifications for financial assistance. Thus, none of the information is excepted as private information by section 552.101 of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Open Government Section

SG/GCK/rho

Ref.: ID# 24365
ID# 24514
ID# 24616
ID# 24701
ID# 24884
ID# 25103

Enclosures: Submitted documents

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